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Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 May 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Nepal: Custodial torture is rooted in the police stations of the country

1. The Asian Legal Resource Centre (ALRC), along with the Terai Human Rights Defenders (THRD) Alliance, would like to bring the entrenched practice of custodial torture in Nepal to the attention of the UN Human Rights Council.

2. In relation to the decade-long conflict period from 1996 to 2006, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, following a visit to Nepal in September 2005, concluded, inter alia, that "Torture is systematically practiced by the police, armed police and Royal Nepalese Army. Legal safeguards are routinely ignored and effectively meaningless. Impunity for acts of torture is the rule, and consequently victims of torture and their families are left without recourse to adequate justice, compensation and rehabilitation[1]."

3. Government officials have failed to recognize, and at times have blatantly denied, the existence of the systematic use of torture in the post-conflict period, and downplayed the scale of the problem by characterizing instances of torture as isolated incidents[2]. Notwithstanding, the work of NGOs such as THRD Alliance, Forum for Protection of Peoples' Rights (PPR) Nepal, and Advocacy Forum (AF) has demonstrated that torture remains widespread and prevalent in Nepal to this day.

4. The most common methods of physical torture reported include beatings using the hands, kicking (which may be while the police are still clad in their boots) and using instruments such as bamboo sticks, plastic pipes, and batons. The severity of the torture does not necessarily depend on whether the police use instruments. For example, in recent years, a victim died after having been kicked in his head and chest by an Armed Police Force man clad in his boots[3]. The aforementioned list of torture methods by the Nepal Police Force, documented by THRD Alliance, is not exhaustive. For example, the Asian Human Rights Commission, sister organization of the ALRC, reported last year that pins were inserted under the fingernails of a 13-year-old girl to make her confess to having stolen gold[4].

5. With regard to the torture of the Madhesi people, the Madhes movement of 2007-2008[5] carries explanatory power in drawing attention to the discrimination and marginalization of the Madhesi people (people residing in the Terai region, the plains) by the Pahadi (hill-centric areas such as Kathmandu) dominated state institutions.

6. For example, a young male Madhesi Muslim farmer was detained because he was caught using drugs[6]. However, he appears to have been tortured because he was Madhesi as well. At the police station, he was beaten mercilessly with a bamboo stick on his waist and legs, with the policemen repeatedly shouting at him "*Madhesi sala*" (ethnic slur and vulgarities), with the victim finally losing unconsciousness due to the severity of the beatings. The victim shared that he felt he was treated differently as an "Indian" (which is how several Madhesis are perceived) rather than a Nepalese.

7. The government has largely failed to recognize the problem of torture even exists, characterizing the instances reported as "isolated" and having occurred during the armed conflict. Additionally, it effectively disclaims any responsibility for torture committed by the state forces by devolving responsibility to the individual police officer.

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[1] Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak (E/CN.4/2006/6/Add.5) of 9 January 2006, para 31.

[2] http://www2.ohchr.org/english/bodies/cat/docs/Art20/NepalAnnexXIII.pdf, See Paragraph 26

[3] This occurred in the case of Mangare Murau, a rickshaw driver who was tortured after he refused to pay a bribe. This case was reported in THRD Alliance's "Continuing Extra Judicial Executions in the Terai" at pages 61 to 63.

[4] http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-009-2014

[5] Politically, it has been reported that the Madhesh movement is the strongest identity-based movement to have taken place in Nepal's modern history. See: "The Landscape of Madesh: Politics, Society and Economy of the Plains", Edited by Ruhi Tewari and Anirudh Prasad Sah, Nepal Madesh Foundation, 2012.

[6] This case is also a sad reflection of the fact that the idea of drug users needing help and rehabilitation, rather than torture and discrimination in the hands of the State, is still little recognised. The ignorance of the police here aggravates the problems of drug users, rather than alleviate them. See: Open Society Foundations, "Treatment or Torture? Applying International Human Rights Standards to Drug Detention Centres", 2011. See: www.stoptortureinhealthcare.org.

8. The State party's acquiescence in torture is demonstrated by its specific failure to criminalize torture. The Supreme Court directed the government on 23 May 2009 to formulate a legislation criminalizing torture, i.e. more than five years ago. It has been fifteen years since the State ratified the Convention Against Torture (CAT). However, torture is still not a criminal act in Nepal. As such, perpetrators walk free today, and continue to work in police stations with impunity.

9. Most importantly, the corollary consequences of the government refusing to recognize the pressing nature of the problem of torture are that law and order in Nepal (which is shaky to begin with) unravels further and threatens the foundations of the justice system being built in a fresh post-conflict state. In this regard, the possibility that the perpetrators of torture are not dealt with harshly because their actions may privately be seen as justifiable by the policymakers in the context of deteriorating law and order shall also be dealt with.

10. In June 2009, a coalition of international and local non-governmental organisations, as well as the National Human Rights Commission (NHRC), had already submitted a model bill for the criminalization of torture to the then government[7]. Subsequently, in 2012, the government tabled a draft Bill criminalizing torture[8]; it was not passed because Parliament was subsequently dissolved. However, issues have been raised by civil society regarding the contents of the draft Bill, such as the restrictive definition of torture victims and perpetrators, and the low penalties (maximum of five years' imprisonment and a fine of less than $600). As such, the way forward is for the government to seek input from civil society regarding the contents of the draft Bill in that they put forward an amended version of the Bill for the government's consideration. This mode of seeking consensus can be done simultaneously while the Constitution is being drafted.

11. Contrary to popular perceptions that torture is a device to only extract confessions from guilty criminals (for "the innocent will never confess"), monitoring by local NGOs in Nepal has shown that torture has largely been used as a tool to extract bribes, sanction the work of human traffickers, and as a show of power. Even in instances where torture may have been used to obtain confessions, these are unreliable since they are not voluntary – with such false confessions (and convictions) resulting in the real criminals walking free. Ironically, in the event that there is clear evidence that the person apprehended is a criminal (and not who has been made to confess due to the hunch of an intuitive policeman prone to torture) – then this completely obviates any perceived "need" for torture.

12. While the government has attempted to devolve responsibility for torture to the individual police officer, in reality, it is solely responsible for creating situational forces that shape the characters of the individual policemen. An implicit compact that no one will be prosecuted for the use of torture encourages, or, at the very least, permits the individual police officer to commit torture.

13. The State of Nepal can take concrete steps to remedy the situation even during this transitional period. Torture only serves to undermine the justice system (both criminal and civil) in Nepal, and this should motivate honest policymakers to take aggressive steps aimed at rooting it out.

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[7] A copy of the bill is available at http://www.redress.org/downloads/publications/Draft%20Model%20Bill%20on%20the%20Prohibition%20of%20Torture.pdf

[8] http://www.ekantipur.com/the-kathmandu-post/2012/06/25/oped/cruel-inhuman-and-degrading/236442.html